

Rule 3, Ariz. R. Crim. P.

ARREST – Arrest defined for Fourth Amendment purposes.....Revised 1/2010

An arrest occurs for Fourth Amendment purposes when “the suspect's liberty of movement is interrupted and restricted by the police.” *State v. Ault*, 150 Ariz. 459, 464, 724 P.2d 545 (1986). A finding that an arrest occurred is determined by an objective examination of the facts, and is a mixed question of law and fact. *State v. Miller*, 186 Ariz. 314, 320, 921 P.2d 1151, 1157 (1996); *State v. Winegar*, 147 Ariz. 440, 445, 711 P.2d 579, 584 (1985); *State v. Diaz*, 222 Ariz. 188, ¶ 3, 213 P.3d 337, 339 (App. 2009). When determining whether an arrest has occurred for Fourth Amendment purposes, courts evaluate all of the surrounding circumstances “to determine whether a reasonable person, innocent of any crime, would reasonably believe that he was being arrested.” *State v. Navarro*, 201 Ariz. 292, 297, ¶ 20, 34 P.3d 971, 976 (App. 2001), quoting *Winegar*, 147 Ariz. at 448, 711 P.2d at 597.

There is no bright line rule to apply in determining when a lawful seizure based on reasonable suspicion becomes an arrest requiring probable cause. *State v. Romero*, 178 Ariz. 45, 49, 870 P.2d 1141, 1145 (App. 1993). Instead, the issue is determined based on “the approach of reason and common sense applied to the totality of the particular circumstances.” *Id.* In *Winegar*, the Arizona Supreme Court made it clear that the question of whether an arrest in fact occurred is determined on an objective basis:

An arrest is complete when the suspect's liberty of movement is interrupted and restricted by the police. *State v. Green*, 111 Ariz. 444, 532 P.2d 506 (1975). Whether the defendant has been arrested is to be tested by the objective evidence and not by the subjective beliefs of the parties. *Id.* Thus, neither defendant's subjective belief that she was under arrest nor the police officer's impressions that defendant was free to go are relevant in making the arrest determination. Indeed, “[a] certain set of facts may constitute an arrest whether or not the officer intended to make an

arrest and despite his disclaimer that an arrest occurred.” *Taylor v. Arizona*, 471 F.2d 848, 851 (9th Cir. 1972).

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The issue [of whether an arrest has occurred for purposes of the Fourth Amendment] turns upon an evaluation of all the surrounding circumstances to determine whether a reasonable person, innocent of any crime, would reasonably believe that he was being arrested. [Citations omitted.]

147 Ariz. at 447-48, 711 P.2d at 586-87

In *State v. Acinelli*, the Court of Appeals stated, “Significant factors in the analysis include the officer’s display of authority, the extent to which the defendant’s freedom was curtailed, and the degree and manner of force used. 191 Ariz. 66, 69, 952 P.2d 304, 307 (App. 1997), *citing State v. Ault*, 150 Ariz. 459, 464, 724 P.2d 545, 550 (1986), 724 P.2d 545, 550 (1986).

Note, however, that the word “arrest” has a different meaning in the context of the crime of resisting arrest in violation of A.R.S. § 13-2508¹ than it does for purposes of determining when a person is under arrest so they may receive the constitutional protections relating to searches and interrogation of suspects. *State v. Mitchell*, 204 Ariz. 216, 62 P.3d 616 (App. 2003), dealt with the question of when an arrest is complete for purposes of resisting arrest and held that a person can resist arrest even though officers have already handcuffed him. In that case, the defendant was handcuffed but continued to fight with officers who were trying to get him into a police car. The defendant argued that under A.R.S. § 13-3881, an arrest is “made by an actual

¹A.R.S. § 13-2508 provides in part: “A person commits resisting arrest by intentionally preventing or attempting to prevent a person reasonably known to him to be a peace officer, acting under color of such peace officer’s official authority, from effecting an arrest by ... using or threatening to use physical force against the peace officer”

restraint of the person to be arrested,” so nothing that he did after he was handcuffed could be considered resisting arrest. *Id.* at 218, ¶ 14, 62 P.3d at 618. The Court of Appeals stated, “[E]ffecting an arrest” is “a process with a beginning and an end” and “may not be limited to an instantaneous event, such as handcuffing.” *Id.* at ¶ 13. The Court rejected Mitchell’s argument, stating that § 13-3881 primarily defines *how* an arrest is made, not *when* an arrest is effected within the meaning of the resisting arrest statute.

Determining *when* an arrest process has been completed requires a case-by case analysis of the facts in the light of the “effecting an arrest” language from § 13-2508. While an arrest as defined by § 13-3881 is characterized by actual restraint or submission, the phrase “effecting an arrest” in § 13-2508 connotes successful, effective restraint of submission of the person.

Id. at 218-219, ¶15, 62 P.3d at 618-619 [citations omitted, emphasis in original]. Since the legislature criminalized physical resistance to arrest with the intent to protect officers and citizens from risk of injury, accepting the defendant’s argument would fail to achieve the legislative intent. *Id.* at 219, ¶ 16, 62 P.3d at 619. The Court declined to “articulate any bright-line test for determining when an arrest has been completed – effected – for resisting arrest purposes,” *Id.* at ¶ 18. The Court recognized that many constitutional law cases say that an arrest is “complete” as soon as the suspect’s liberty of movement is interrupted and restricted by police. *Id.* at ¶ 18, *citing State v. Ault*, 150 Ariz. 459, 464, 724 P.2d 545, 550 (1986). However, constitutional protections regarding searches and interrogations address different considerations than are applicable in the context of resisting arrest and may produce different results. *Id.* at 229-220, ¶ 19, 62 P.3d 616, 619-620. Thus, while a person whose liberty has been restricted in any way may be “under arrest” for purposes of when certain constitutional rights attach, “for purposes of

the crime of resisting arrest in Arizona, the arrest may not yet have been ‘effected’ on the same person.” *Id.* at 220, ¶ 19, 62 P.3d at 620. “The completion of the arrest process for purposes of the resisting arrest statute requires the successful, effective restraint or submission of the person being arrested.” *Id.* at ¶ 21.